

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 3, 2008

TO: Persons on the attached mailing list.

RE: RMD Construction, Inc. and City of Pflugerville
TPDES Permit No. WQ0014642001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Pflugerville City Hall, 100 East Main Street, Pflugerville, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

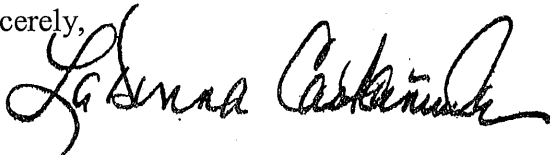
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
RMD Construction, Inc. and City of Pflugerville
TPDES Permit No. WQ0014642001

FOR THE APPLICANT:

Rhett Dawson
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City of Pflugerville
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Austin, Texas 78703

Darren Strozewski, P.E.
HDR Engineering, Inc.
4401 West Gate Boulevard, Suite 400
Austin, Texas 78745

James Wills
City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691

PROTESTANTS/INTERESTED PERSONS:

Judy Davis
11709 New Sweden Road
Manor, Texas 78653

Ismael Guzman
12001 New Sweden Church Road
Manor, Texas 78653-3653

Keith Coburn
Travis County Transportation and
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P.O. Box 1748
Austin, Texas 78767-1748

FOR THE EXECUTIVE DIRECTOR:

Celia Castro, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
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Julian D. Centeno, Technical Staff
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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL:

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Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0014642001

2008 MAY 30 AM 9:32

APPLICATION BY RMD
CONSTRUCTION, INC.
AND
CITY OF PFLUGERVILLE

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application from RMD Construction, Inc. and the City of Pflugerville (Applicants) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014642001, and the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: Judy Davis and Ismael Guzman. This response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicants have applied to the TCEQ for a major amendment that would authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed

150,000 gallons per day (gpd) in the interim I phase, 475,000 gpd in the interim II phase, 950,000 gpd in the interim III phase (current final phase), to an annual average flow not to exceed 3,000,000 gpd in the final phase.

The proposed wastewater treatment facility will serve the City of Pflugerville (City) service area within the extraterritorial jurisdiction and the area in the northwest quadrant of the Cottonwood Creek watershed, adjacent to the wastewater treatment facility. The facility will be located 2,500 feet east of the intersection of Farm-to-Market Road 973 and New Sweden Church Road in Travis County, Texas.

The New Sweden Wastewater Treatment Facility will be an activated sludge process plant operated in the single stage nitrification mode in all phases. Treatment units will include biological nutrient removal, aeration, clarification, aerobic digestion, filtration, chlorination, with dechlorination in the final phase. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The facility has not been constructed.

The effluent limitations in all phases of the draft permit, based on a 30-day average, will be 5 mg/l five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), 5 mg/l Total Suspended Solids (TSS), 2 mg/l Ammonia-Nitrogen (NH₃-N), 1 mg/l Total Phosphorus, and 4.0 mg/l minimum dissolved oxygen (DO). During the three interim phases, the effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. In the final phase, the permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l chlorine residual. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent will be discharged to an unnamed tributary; then to Cottonwood Creek;

then to Wilbarger Creek; then to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1434 are exceptional aquatic life use, public water supply and contact recreation. In accordance with 30 TAC Section 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards (TSWQS), the ED performed an antidegradation review of the receiving waters. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. Although TCEQ assesses three stream miles for toxic pollutants, the assessed area includes the unnamed tributary which is greater than four miles from the point of discharge. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected.

Procedural Background

TCEQ received the application for a major amendment on July 16, 2007 and declared it administratively complete on October 26, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on November 8, 2007 in the *Pflugerville Pflag* and in Spanish on November 21, 2007 in *El Mundo*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in English on February 28, 2008 in the *Pflugerville Pflag* and in Spanish on February 28 - March 5, 2008 in *El Mundo*. The public comment

period ended on March 31, 2008. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Judy Davis expressed concern about the drainage and maintenance of the creek.

RESPONSE 1:

The wastewater permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes, and coastal waters. Chapter 26 of the Texas Water Code (TWC), and applicable wastewater regulations do not require an applicant to address issues pertaining to drainage and maintenance of a creek to obtain a wastewater discharge permit.

COMMENT 2:

Judy Davis expressed concern about flooding in the creek. Ismael Guzman also had similar concerns about flooding and inability of his livestock to cross the creek.

RESPONSE 2:

The permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes, and coastal waters. Chapter 26 of the TWC and applicable wastewater regulations do not require an applicant to address flooding issues to obtain a wastewater discharge permit.

The draft permit includes effluent limits and other requirements that the Applicants must meet even during rainfall events and periods of flooding. The Applicants must also maintain

adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ.

The draft permit does not authorize the Applicants to enter or restrict the use of the property of another without authorization. If easements or other means of access are required by the facility, it is the responsibility of the Applicants to obtain the necessary authorizations. Furthermore, the permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 3:

Judy Davis and Ismael Guzman expressed concern about erosion.

RESPONSE 3:

The permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes, and coastal waters. Chapter 26 of the TWC and applicable wastewater regulations do not require an applicant to address erosion issues in their application to obtain a wastewater discharge permit. Furthermore, wastewater permits do not contain provisions to control erosion.

Nevertheless, in order to respond to this comment, the Applicants estimated that the creek's velocity created by the plant's proposed discharge of 3,000,000 gpd was 0.22 feet per second (fps) along Ms. Davis' property. The Applicants also estimated that the creek's velocity created by the

plant's proposed discharge of 3,000,000 gpd was 0.37 fps along Mr. Guzman's property. These velocities are below the minimum scouring velocity used in the design of sewer lines, i.e., 2 fps. The Applicants' estimates did not include naturally occurring water from rainfall events or naturally occurring base flow. The discharge of wastewater from the proposed final phase flow is therefore not anticipated to contribute to surface erosion.

COMMENT 4:

Judy Davis expressed concern that increasing the flow will damage her property, thereby decreasing its value and increasing efforts to maintain a fence and provide a safe grazing ground for livestock. Mr. Guzman expressed a similar concern about property damage.

RESPONSE 4:

Potential effects on property values or provisions of safe grazing ground for livestock are not considered in the review of a wastewater permit application. However, the issuance of a permit does not grant to the Applicants the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the Applicants to acquire property rights as may be necessary to use the discharge route.

Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 5:

Judy Davis expressed concern about harm to the natural vegetation and wildlife of the area.

RESPONSE 5:

The water quality permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. All discharges to surface water must comply with the Texas Surface Water Quality Standards (TSWQS) in 30 TAC Chapter 307. The purpose of the TSWQS is to maintain the quality of water in the state and to protect aquatic and terrestrial life (including wildlife) as well as human health along the discharge route.

To ensure compliance with the TSWQS, the ED has proposed effluent limits in the draft permit. The effluent limitations will maintain and protect the existing instream uses. The requirements in the draft permit were established to be protective as long as the Applicants operate and maintain the facility according to the TCEQ rules and the requirements in the draft permit. The Applicants are required to comply with the permit that incorporates both state and federal rules and regulations. Failure to comply with the requirements in the draft permit can subject the Applicants to enforcement actions, including administrative penalties.

COMMENT 6:

Judy Davis claimed that the quality of drinking water in the unnamed tributary will be compromised.

RESPONSE 6:

The unnamed tributary is not designated for public water supply use. It is unlikely that this untreated surface water currently meets the drinking water standards. With or without the discharge,

it is not recommended to drink surface water from the unnamed tributary that has not been properly treated to drinking water standards.

COMMENT 7:

Ismael Guzman claimed that the Applicants did not show a need for the proposed increase in flow.

RESPONSE 7:

If an applicant seeks to increase its discharge volume, it must submit a permit application to the TCEQ requesting an amendment to increase its permitted flows. An applicant would have to justify any increase in permitted flow by providing information regarding additional service areas. For example, if additional flow is dependent upon housing/commercial development, an applicant must provide information from the developer. This may include information such as the size of the development (number of lots) and the anticipated growth rate of the development (number of houses per month or year). Population estimates or projections used to derive the flow estimates and anticipated growth rates for developments as well as wastewater generation rates may be required. The source and basis upon which population figures were derived (i.e., census and/or other methodology) may also be requested. At that time, the staff evaluates the need for additional flows and determines whether they will have an adverse effect on the receiving waters.

The Applicants submitted a letter explaining that the proposed flow was derived by taking the total area and evaluating the anticipated amount of development activity anticipated to occur in the next five years. Existing known development projects, known potential developments, and prospective development projects were assessed. There is a total of 914 acres planned for single family residences and 4,354 additional acres of land for which the type of development has not been

finalized. Based on previous analysis conducted by the City of its existing wastewater service areas, a value of 3.25 Living Unit Equivalents (LUE) per acre has been established as a planning level density for acreages such as this which are anticipated to be primarily developed into single family residential homes with some commercial property.

Also, from a previous City analysis, a flow rate of 270 gpd per LUE has been determined from its existing wastewater service areas. Thus, taking a total service area acreage of 5,268 (914 acres plus 4,354 acres) times 3.25 LUE/acre times 270 gpd/LUE equals a total estimated wastewater demand of 4,620,000 gpd average annual flow. Based on the City's rapid growth over the last 10 years and the level of development interest in this area, two-thirds of the ultimate capacity (3,000,000 gpd) could potentially be developed or require wastewater service commitments from this facility over the next five years. Capacity to accommodate the remaining 1,620,000 gpd may be applied for at a later date depending on how actual development activity measures up against the projected development.

COMMENT 8:

Judy Davis would like the Applicants to find an alternate solution or location.

RESPONSE 8:

The ED evaluates applications for wastewater treatment plants, based on the information provided in the application. TWC, Section 26.027, authorizes the Commission to issue permits for discharges into or adjacent to water in the state after considering the impacts to water quality. Beyond restrictions based on environmental concerns, the ED does not determine the method of wastewater treatment required by the Applicants or the exact physical location of a wastewater treatment facility.

Applicants have the responsibility under the permit to acquire property rights “as may be necessary to use the discharge route and they do not have the right to use private or public property for conveyance of wastewater along the discharge route including, but not limited to, property belonging to any individual, partnership, corporation or other entity.” The permit does not “authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations.”

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division



Celia Castro, Staff Attorney
Environmental Law Division
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P.O. Box 13087, MC 173
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(512) 239-5692
REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 30, 2008, the "Executive Director's Response to Public Comment" for Permit No. WQ0014642001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350

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2008 MAY 30 AM 9:32
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